

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE SHANE GROUP, INC., BRADLEY)
A. VENEBERG, MICHIGAN REGIONAL)
COUNCIL OF CARPENTERS)
EMPLOYEE BENEFITS FUND,)
ABATEMENT WORKERS NATIONAL)
HEALTH AND WELFARE FUND,)
MONROE PLUMBERS & PIPEFITTER)
LOCAL 671 WELFARE FUND, and)
SCOTT STEELE,)

Plaintiffs,)

v.)

BLUE CROSS BLUE SHIELD OF)
MICHIGAN,)

Defendant.)

Case No. 2:10-cv-14360-DPH-MKM

DECLARATION OF SHANNON R. WHEATMAN, PH.D.

ON ADEQUACY OF NOTICE PLAN

I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

1. I am president of Kinsella Media, LLC (“KM”), an advertising and notification firm in Washington, D.C. specializing in the design and implementation of class action and bankruptcy notification programs. My business address is 2001 Pennsylvania Avenue NW, Suite 300, Washington, D.C. 20006. My telephone number is (202) 686-4111.

2. In the above referenced matter, *The Shane Group v. Blue Cross Blue Shield of Michigan*, I was asked to design notices and a notice plan to inform class members about their rights with respect to a new class action settlement (“Settlement”) and the availability of documents that

were previously sealed. I submitted a similar declaration in 2014 after an earlier settlement was reached in this case (see “Declaration of Shannon R. Wheatman, Ph.D. on Adequacy of Notice Plan” dated June 23, 2014). In this earlier declaration, my c.v. was attached, and I detailed my class action notice experience, expertise in the form and content of class action notice, and publications on notice and due process. I also provided my educational and professional experience relating to class action notice programs and my ability to render opinions on the overall adequacy of notice programs.

3. This declaration will describe the current proposed notice plan (“Notice Plan”) and notices (the “Notice” or “Notices”) and explain why it is as effective as the initial notice plan (“Initial Notice Plan”) the Court previously approved.

NOTICE PLAN

4. KM was retained in this litigation to design a Notice Plan and implement the paid media portion, under the supervision of Class Counsel. The Settlement Administrator, Epiq Systems, Inc. (“Epiq”), was retained to implement the remainder of the Notice Plan, namely, individual notice and updating the case website, also under the supervision of Class Counsel.

5. In my opinion, a media program similar to the Initial Notice Plan should be utilized. The proposed Notice Plan will provide Settlement Class Members updated information about the litigation and allow them to review the previously sealed documents and exercise their rights.

6. KM proposes implementing a Notice Plan that provides updated notice to Settlement Class Members. The notice effort includes direct notice, paid media, and an updated informational website. The proposed Notice Plan replicates the Initial Notice Plan as closely as possible and is estimated to reach 82.9% of the Settlement Class, which is the same level

achieved in the Initial Notice Plan.¹

7. Choosing a target audience that encompasses the characteristics of Settlement Class Members is the first step when designing a paid media program for a notice plan. For both notice plans, KM used syndicated data available from GfK MediaMark Research, Inc.'s ("GfK MRI") *Doublebase Study*² and comScore³ to select a target audience with demographics that encompass the characteristics of Settlement Class Members. GfK MRI does not specifically measure direct purchasers of healthcare services from Michigan General Acute Care Hospitals. However, given the broad range of demographics that encompass Settlement Class Members, KM selected a surrogate target audience of Michigan adults 18 years of age or older ("Michigan Adults 18+"). Using Michigan Adults 18+ for media selection and measurement purposes is appropriate for this case because it is the closest measureable target to the Class. Media outlets were then analyzed and selected for their ability to provide effective and cost-efficient penetration of this demographic target.

8. Next, KM measured the percentage of the target audience reached by the media program and direct notice and the target audience's frequency of exposure to the media and direct notice. *Reach*⁴ and *frequency*⁵ estimates are two of the primary measurements used to quantify the media penetration of a target audience. The Initial Notice Plan reached approximately 82.9% of

¹ The previous notice program included *USA Weekend*, which is no longer published. To maintain the overall reach of the proposed Notice Plan, KM will substitute *USA Weekend* with other publications (*American Profile*, *Relish*, *Reader's Digest*, *National Geographic*).

² GfK MRI is a nationally accredited media and marketing research firm that provides syndicated data on audience size, composition, and other relevant factors pertaining to major media, including broadcast, magazines, newspapers, and outdoor advertising. GfK MRI produces the annual Doublebase Survey, a study of over 50,000 adults consisting of two full years of data. For this Notice Plan, we used the *2016 Doublebase Study*.

³ comScore, Inc. is a source of Internet audience measurement for advertising agencies, publishers, marketers and financial analysts. ComScore measures Internet usage and other activity through monitoring software installed on the computers of a panel of approximately 2,000,000 people. Active in 170 countries, comScore tracks more than 3 million unique websites.

⁴ *Reach* is the estimated percentage of a target audience that is exposed to an advertisement (or notice) one or more times through a specific media outlet or combination of media outlets within a given period.

⁵ *Frequency* is the estimated average number of times the audience could view a given advertisement (or notice) during a specific time period.

Michigan Adults 18+ an average frequency of 2.2 times. As noted below, the proposed Notice Plan is expected to reach 82.9% of Michigan Adults 18+ an average frequency of 2.3 times.

9. I have been involved in drafting the various forms of Notice described below. Each form is noticeable, clear, concise, and written in plain, easily understood language.

10. As detailed below, in my opinion, the Notice Plan represents the best notice practicable under the circumstances.

Individual Notice

11. A list of Settlement Class Members is available from the Initial Notice Plan, and it would be reasonable to implement an individual notification effort to reach them. This list consists of all Settlement Class Members who can be identified through reasonable efforts.

12. Based on information provided by Class Counsel, I understand that Plaintiffs have the following Settlement Class Member name and address information:

a. The names and addresses of Blue Cross Blue Shield of Michigan (“BCBSM”) customers and members, produced as part of BCBSM’s production of its claims database in this litigation.

b. The names and addresses for Aetna’s self-insured customers, produced by Aetna during the litigation.

c. The names and addresses of Priority Health (“Priority”) members, provided by Priority.

13. To date, Class Counsel currently have names and addresses for 2,394,079 BCBSM members; 1,134 BCBSM self-insured groups; 491,445 Priority members; 179 Aetna self-insured groups; and 99 commercial health insurers.

14. Epiq will send Notice via mail to these potential Settlement Class Members. Individual Notice, consisting of a Postcard Notice, will provide Settlement Class Members with

opportunities to learn that the previously-sealed court records are now available for review; see, read, and understand their rights; and act if they so choose.

15. Prior to mailing, Epiq will check all addresses against the National Change of Address (“NCOA”)⁶ database, which is maintained by the United States Postal Service (“USPS”). In order to ensure the most accurate mailings possible, Epiq will also certify addresses via the Coding Accuracy Support System (“CASS”), and verify them through Delivery Point Validation (“DPV”).⁷

16. For any Postcard Notices that are returned as non-deliverable, Epiq will re-mail them to any address indicated by the USPS in the case of an expired automatic forwarding order. For Notices returned as non-deliverable, but for which a new address is not indicated by the USPS, Epiq will further search through another vendor to obtain a more current address. If any such address is found, Epiq will re-mail the Notice.

Paid Media

17. To supplement the Individual Notice, KM will implement a paid media program to reach Settlement Class Members who do not receive a Postcard Notice via mail.

18. The Publication Notice will appear in the following consumer magazines:

a. A full-page ad (5” x 9”) in *National Geographic* – Michigan state edition with an estimated circulation of 89,000.

b. A full-page ad (7” x 10”) in *People* – Michigan state edition with an estimated

⁶ The NCOA database contains records of all permanent changes of address submissions received by the USPS for the last four years.

⁷ CASS is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems. Records that are properly coded are then sent through Delivery Point validation to verify the address is correct. If they are incorrect, DPV will report exactly what is wrong with the address.

circulation of 93,000.

c. A full-page ad (4.687" x 6.75") in *Reader's Digest* – Michigan state edition with an estimated circulation of 117,500.

19. The Publication Notice will appear as a one-fourth page ad in the following newspapers:

Newspaper	Size	Edition	Circulation
<i>Alpena News</i>	4.949" x 7"	Daily	7,616
<i>Bay City Times</i>	5.387" x 7"	Weekday	16,549
<i>Bay City Times</i>	5.387" x 7"	Sunday	26,619
<i>Detroit Free Press</i>	5.75" x 7"	Daily	256,076
<i>Detroit News</i>	5.75" x 7"	Daily	318,531
<i>Flint Journal</i>	5.387" x 7"	Weekday	33,506
<i>Flint Journal</i>	5.387" x 7"	Sunday	45,095
<i>Grand Rapids Press</i>	5.387" x 7"	Weekday	66,886
<i>Grand Rapids Press</i>	5.387" x 7"	Sunday	98,963
<i>Jackson Citizen Patriot</i>	5.387" x 7"	Weekday	16,874
<i>Jackson Citizen Patriot</i>	5.387" x 7"	Sunday	22,689
<i>Kalamazoo Gazette</i>	5.387" x 7"	Weekday	26,968
<i>Kalamazoo Gazette</i>	5.387" x 7"	Sunday	36,725
<i>Lansing State Journal</i>	4.918" x 7"	Weekday	37,965
<i>Lansing State Journal</i>	4.918" x 7"	Sunday	52,398
<i>Marquette Mining Journal</i>	4.95" x 7"	Weekday	10,268
<i>Marquette Mining Journal</i>	4.95" x 7"	Sunday	12,345
<i>Saginaw News</i>	5.387" x 7"	Weekday	19,880
<i>Saginaw News</i>	5.387" x 7"	Sunday	23,787
<i>Traverse City Record-Eagle</i>	5.44" x 7"	Weekday	14,471
<i>Traverse City Record-Eagle</i>	5.44" x 7"	Weekday	18,279

20. The Publication Notice will appear in the following newspaper supplements:

a. A full-page ad (8" x 9.125") in *American Profile* – Michigan state edition with an estimated circulation of 112,541.

b. An M-page ad (5.75" x 9.125") in *Parade* – Michigan state edition with an estimated circulation of 615,279.

c. A full-page ad (8" x 9.125") in *Relish* – Michigan state edition with an estimated circulation of 109,074.

21. KM will place banner advertisements⁸ nationally and statewide (in Michigan) on *Xaxis*⁹ to reach a total estimated 11,042,000 geo-targeted gross impressions¹⁰ and 11,111,000 national gross impressions. Similar to the last Notice Plan, the banner advertisement will state, "If You Paid for Medical Services at a Michigan Hospital from January 1, 2006 through June 23, 2014, You Could Get Money from a New Class Action Settlement" and provide the Settlement website at the bottom of the advertisement. When viewers click on the banner, they will be instantly directed to the Settlement website for further information. National Internet advertising is included to reach those who moved out of state.

Effectiveness of Notice Plan

22. The Notice Plan provides Settlement Class Members with multiple exposure opportunities to the Notice. The *reach* and *frequency* of the Notice Plan were measured against the target audience to evaluate the strength and efficiency¹¹ of the paid media (magazines, local newspapers, newspaper supplements, and Internet advertising). In combination with direct notice, the Notice Plan is expected to reach 82.9% of Michigan Adults 18+ with an average frequency of 2.3 times. The media elements were selected to maximize the reach in the most cost-effective way. KM selected a combination of media elements that will present opportunities to the most Settlement Class Members at the least cost.

⁸ Banner advertisements are a tool used to advertise on the Internet. Banner advertisements are typically located at either the top or side of a website page.

⁹ *Xaxis* is a network that represents over 5,000 websites. Impressions will be delivered both nationally and to Michigan-specific IP addresses.

¹⁰ Gross impressions are the total number of times a media vehicle containing the Notice is seen. This figure does not represent the total number of unique viewers of the Notice, as some viewers/readers will see the Notice in more than one media vehicle.

¹¹ Efficiency is defined as the ratio of the cost of advertising to the total number of targeted audience members reached.

Other

23. Epiq will update the website (www.MichiganHospitalPaymentsLitigation.com), toll-free number, and frequently asked questions to enable Settlement Class Members to get current information about the Settlement and learn that the previously-sealed court records are available for review.

NOTICE FORM AND CONTENT

24. Attached to the Settlement Agreement as **Exhibits B, C, and D** are copies of the Postcard Notice, Publication Notice, and Long Form Notice.

25. The Notices effectively communicate information about the Settlement.

26. The Summary Notices (Postcard and Publication Notices) are designed to capture Settlement Class Members' attention and inform them that previously-sealed documents are now available for their review. They direct readers to the Settlement website or toll-free number for more information. The plain language text provides important information regarding the subject of the litigation, the Settlement, the Settlement Class definition, and the legal rights available to Settlement Class Members. No important or required information is missing or omitted. In fact, these Notices state all required information without omitting significant facts that Settlement Class Members need to understand their rights.

27. The Long Form Notice will be available at the website, by calling the toll-free number, or by mailing or emailing a request to the Settlement Administrator. The Long Form Notice provides substantial information about the Settlement, litigation, claims process, the recently unsealed court records, and all specific instructions Settlement Class Members need to properly exercise their rights. It has been updated to include information about changes in the case. This Notice is designed to encourage readership and understanding, in a well-organized and reader-friendly format.

CONCLUSION

28. It is my opinion that the reach of the target audience, number of exposure opportunities to the notice information, and content of the Notices are adequate and reasonable under the circumstances. The Notice Plan is consistent with the standards employed by KM in notification programs designed to reach class members. The Notice Plan, as designed, is fully compliant with Rule 23 of the Federal Rules of Civil Procedure and due process.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. this 11th day of October 2016.

A handwritten signature in dark ink, appearing to read "Shannon R. Wheatman", with a long horizontal flourish extending to the right.

Shannon R. Wheatman